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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments,) MB Docket No. 05-162
FM Broadcast Stations) RM-11227
(Enfield, New Hampshire; Hartford and White River)
Junction, Vermont; and Keeseville and Morrisonville,)
New York))

To: Office of the Secretary
Attn: Assistant Chief, Audio Division, Media Bureau

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COMMENTS

Radio Broadcasting Services, Inc. ("RBS"), by its attorneys and pursuant to Section 1.420 of the Commission's Rules, hereby submits these Comments in response to the Notice of Proposed Rulemaking, issued by the Media Bureau in this proceeding on April 8, 2005 (the "NPRM"),¹ setting forth the Petition filed Nassau Broadcasting III, L.L.C. ("Nassau"), the licensee of Stations WWOD(FM), Channel 282C3, Hartford, Vermont ("WWOD") and WXLFFM), Channel 237A, White River Junction, Vermont ("WXLFF"), to amend the FM Table of Allotments as follows: (1) to reallocate Channel 282C3 from Hartford, Vermont to Keeseville, New York and to modify the license of WWOD accordingly; (2) to reallocate Channel 237A from White River Junction, Vermont to Hartford, Vermont and to modify the license of WXLFF accordingly; (3) to reallocate vacant Channel 231A from Keeseville, New York to Morrisonville,

¹ *Enfield, New Hampshire; Hartford and White River Junction, Vermont; and Keeseville and Morrisonville, New York*, 20 FCC Rcd 7587 (MB 2005). Pursuant to the NPRM, May 31, 2005 is the deadline for the filing of comments. These Comments are therefore timely filed.

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New York; and (4) to allot Channel 282A to Enfield, New Hampshire. Nassau's proposal is a thinly-disguised attempt to achieve, by alternate means, the very same Channel 282C3 Keeseville allotment unsuccessfully sought by Nassau's predecessors-in-interest.² Not only do the public interest considerations identified by the Commission in *Keeseville I* apply with equal force to Nassau's second bite at the apple, but Nassau's proposal ignores the outcome of *Keeseville I* in violation of Commission policy concerning vacant allotments and expressions of interest therein. Nassau's Petition should, like its preceding effort, be denied. In support thereof, RBS states as follows.

The petitioners in *Keeseville I* sought to change the allotments of WWOD, Channel 282C3 from Hartford, Vermont to Keeseville, New York and WXLN, Channel 237A from White River Junction to Hartford, Vermont.³ The Commission rejected the proposal, correctly choosing instead to accept a Counterproposal for a new drop-in channel to Keeseville, thereby bringing a first local service to Keeseville without disrupting existing service at either Hartford or White River Junction, Vermont. In rejecting the petitioners' initial proposal (as well as their settlement proposal, involving a second allotment at Keeseville, offered only in response to the Counterproposal) the Commission reasoned as follows:

We conclude that adopting the new drop-in channel to Keeseville at the same time maintaining the balance of existing services would best serve the public interest. In addition to a first local service to Keeseville (population 1,850 persons),

² See *Keeseville, New York, Hartford and White River Junction, Vermont*, 19 FCC Rcd 16106 (MB 2004) ("*Keeseville I*"). No party sought reconsideration or review of this proceeding.

³ See *id.* at 16106. At the time *Keeseville I* was before the Commission, Nassau had already entered into an agreement with the licensees of WWOD and WXLN to purchase the Stations. Pursuant to Section 2.1(b) of the Asset Purchase Agreement among the parties, dated March 9, 2004, three million dollars (\$3,000,000) was to be added to the purchase price in the event that Commission granted the requested WWOD, Channel 282C3 move to Keeseville.

adoption of the counterproposal would maintain a first local service on a higher class channel at Hartford (population 10,367 persons) and maintain the first competitive and first nighttime service at White River Junction. The public interest is better served by maintaining the second local and first nighttime service at the larger community of White River Junction (population 2,569 persons) than allotting a second channel to the smaller community of Keeseville. Further, this is consistent with our analysis of similar cases decided under Priority (4) in which we have held that retention of the original community's first competitive and first nighttime service outweighs the new community's need for a first competitive or second local service. Hall [Hall Communications, the party offering the Counterproposal] has indicated that it would apply for this channel if we allotted it.⁴

This paragraph set forth two clear facts that Nassau blithely ignores with its latest proposal: (1) *Keeseville I* represents a well-reasoned, deliberate decision on the part of the Commission to allot Channel 231A to Keeseville and to preserve the "balance of existing services" at Hartford and White River Junction; and (2) the Counterproponent's expression of interest in the Channel 231A Keeseville allotment is a matter of Commission record. Nassau's abiding private interest in a Channel 282C3 allotment at Keeseville cannot trump or otherwise erase *Keeseville I*, and Nassau's attempt to rewrite the outcome of that proceeding by simply instituting a new one must be denied.

To begin with, Nassau's Petition proposes the same removal of service from Hartford and White River Junction that the Commission took exception to in *Keeseville I*. Under Nassau's new proposal, Hartford will still see its Class C3 service downgraded to Class A service, and White River Junction will still lose its only full-time local FM service.⁵ Nassau's attempt to compensate for this loss of service by proposing first aural local transmission services at Enfield, New Hampshire and Morrisonville, New York is unavailing. The provision of first aural local

⁴ *Id.* at 16110.

⁵ Besides WXLF, the only Station licensed to White River Junction is Station WNHV(AM), a Class D daytime-only Station.

transmission service to Morrisonville, population 1,702, and Enfield, population 1,698,⁶ is little more than different window-dressing for the same main attraction, the Channel 282C3 allotment at Keeseville. Given the Commission's careful weighing of interests in *Keeseville I*, and its clear decision in favor of preserving existing service to White River Junction and Hartford, new services to Morrisonville and Enfield should not be enough now to tip the scales in favor of the Channel 282C3 allotment. The same disruptions in service to White River Junction and Hartford cited in *Keeseville I* are an integral part of Nassau's current proposal, and such disruptions in service remain as contrary to the public interest here as they were in the previous proceeding.

Further, in addition to ignoring the Commission's rationale in *Keeseville I*, Nassau's current proposal completely disregards the outcome of that proceeding. The Commission allotted Channel 231A to Keeseville, and recognized the Counterproponent's expression of interest therein. Under Commission policy, any party seeking the deletion of an allotment in which there is already an expression of interest must establish that extraordinary circumstances warrant such a deletion.⁷ No such extraordinary circumstances have been presented here by Nassau. Rather, this proceeding is driven by Nassau's desire to undo the outcome of *Keeseville I* and to claim the Channel 282C3 Keeseville allotment that the Commission has already determined is not in the public interest and to which Nassau is not otherwise entitled.

In the end, while styled as a new proceeding, Nassau is effectively seeking an untimely reconsideration of *Keeseville I*. However, the Commission does not tolerate such manipulations

⁶ In its Petition, Nassau cites the township figure for Enfield, 4,618 persons. See Petition at 7. The more appropriate population is the Census Designated Place population, 1,698 persons. See *US Census Bureau - American FactFinder*, Enfield CDP, www.factfinder.census.gov (last visited May 31, 2005).

⁷ See *Montrose and Scranton, Pennsylvania*, 5 FCC Rcd 6305 (1995); *Billings and Lewistown, Montana*, 11 FCC Rcd 8560 (1996).

of its procedural rules, in part to protect parties' interests in the finality of Commission decisions, such as the Counterproponent's expression of interest in the Channel 231A Keeseville allotment. As Commission precedent clearly establishes, petitions that in substance amount to petitions for reconsideration, even if not styled as such, must be dismissed if they are not filed within 30 days of public notice of the action at issue.⁸ Further, the United States Court of Appeals for the District of Columbia has discouraged the Commission from accepting untimely petitions for reconsideration "in the absence of extremely unusual circumstances."⁹ Again, Nassau has failed to present any "extremely unusual circumstances" here, only its dissatisfaction with the outcome of *Keeseville I*, and its desire to get around the substantive decision made by the Commission there: namely, that continuation of the existing services at Hartford and White River Junction better serve the public interest than the removal of such services in order to add a Class C3 service at Keeseville.

⁸ See *Troy State University*, 15 FCC Rcd 638, 643 (WTB 2000); *Nextel Communications, Inc.*, 13 FCC Rcd 281, 283-84 (WTB 1998).

⁹ *Virgin Islands Telephone Corp. v. FCC*, 989 F.2d 1231, 1237 (D.C. Cir. 1993) (citing *Reuters, Ltd. v. FCC*, 781 F.2d 946, 951-52 (D.C. Cir. 1986)).

WHEREFORE, Radio Broadcasting Services, Inc. respectfully requests that the Commission deny the Petition for Rule Making submitted by Nassau Broadcasting III, L.L.C.

Respectfully submitted,

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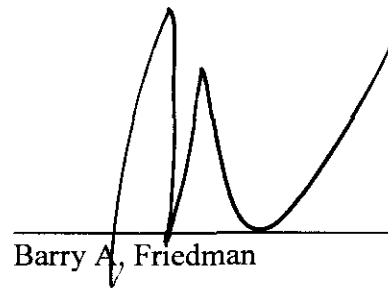
May 31, 2005

CERTIFICATE OF SERVICE

I, Barry A. Friedman, do hereby certify that I have, on this 31st day of May, 2005, served a copy of the foregoing "Comments" on the following parties, by first-class mail, postage prepaid:

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